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that finding was rested, and which must, at the time of the appeal from the decree on remand, have been satisfactory to the parties. The alternative would be a most disastrous one; it would be necessary to send back this case for an inquiry, which might result in something more being found for mesne profits, or something less, but which would probably cost a great deal more than the amount in dispute.

Their Lordships think that they ought not to disturb the decree upon this point, and the result is that the appeal fails on every point, and it must be dismissed with costs. Their Lordships will humbly advise Her Majesty accordingly.

Appeal dismissed with costs.

Solicitors for the appellant: Messrs. T. L. Wilson & Co.

Solicitors for the respondents: Messrs. Barrow & Rogers.

C. B.

APPELLATE CIVIL.

Before Mr. Justice O'Kinealy and Mr. Justice Trevelyan.

1889
January 10.

GUNAMONI NATH (DEFENDANT No. 7) v. BUSSUNT KUMARI
DASI (PLAINTIFF) AND OTHERS (DEFENDANTS).*

Vendor and Purchaser—Notice—Notice of possession of rent—Notice of tenancy—Purchaser how far affected with notice of lessor's title.

Notice of possession of the rents of property is notice of the tenancy; but does not of itself affect a purchaser with notice of the lessor's title.

Barnhart v. Greenshields (1) referred to.

THE plaintiff, Busunt Kumari Dasi, brought a suit against Nashiram Halder and six others for the partition of a plot of rent-free *brohmutter* land, containing homestead and garden land and a tank, situate in the village of Barisha in Pergunnah Khaspur, in the District of the 24-Pergunnahs. The property belonged to a family which, at one time, consisted of three brothers—Kristo

* Appeal from Appellate Decree No. 442 of 1888, against the decree of H. Beveridge, Esq., Judge of 24-Pergunnahs, dated the 8th of November 1887, modifying the decree of Baboo Hurikrishno Chatterjee, Munsiff of Alipore, dated the 14th of February 1886.

Chunder Haldar, Pitumber Haldar, and Horihor, also called Horish Haldar. Kristo Chunder died without issue, leaving a widow Padyamoni Debi. Pitumber died leaving a son, Kenaram Haldar (defendant No. 2). Horihor Haldar died in the month of Aughran 1285 B. S. (November-December 1878), leaving a son Nashiram Haldar (defendant No. 1), and a grandson by a son, Upendro Nath Haldar. By a registered deed of sale, bearing date the 24th Choit 1292 B. S. (5th April 1886), Upendro sold his share in the property in suit to the plaintiff. Gunamoni Nath (defendant No. 7) purchased the proprietary right of Padyamoni and Horish Chunder in one bigha one cotta of land let out by them in mourasi to Narsingh Kumar Dut (defendant No. 3) under a lease dated 23rd Assar 1281 (6th July 1874). He also purchased nine cottas more from Padyamoni and Horish contained in the same boundary. This purchase Gunamoni made under a kobala dated the 20th Srabun 1285 (4th August 1878). The deed was not registered, but Padyamoni and Horish made over to Gunamoni the registered kabuliut executed in their favor by the defendant Narsingh Kumar Dut.

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This suit and another, brought by the plaintiff against Nashiram Haldar (defendant No. 1), Kenaram Haldar (defendant No. 2), and a third person, for the partition of the joint family dwelling-house of the Haldars, were tried together by the Second Munsiff of Alipur. The issue, so far as the defendant Gunamoni was concerned, and so far as is material to this report, was whether the kobala under which Gunamoni claimed was genuine and *bona fide*, and was to be preferred to the registered kobala of the plaintiff.

At the trial dakhilas (receipts) were filed to show that Narsingh Kumar Dut had paid rent to Gunamoni since his purchase in respect of the one bigha one cotta held by him under the lease of 23rd Assar 1281. But Gunamoni admitted that he had not been able to obtain possession of the remaining nine cottas covered by his deed of sale. It was contended for the plaintiff that this deed was a forgery; and, as an unregistered document, could not be preferred to the plaintiff's kobala, which was a registered document and of a later date.

On this issue the Munsiff held that the deed of sale to Gunamoni was not a forgery, but a genuine document; and that, as far

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as the one bigha one cotta leased to Narsingh Dut was concerned it had been accompanied with delivery of possession. He also held that the plaintiff was affected with notice of Gunamoni's purchase. He said: "Although mere possession under an unregistered conveyance is not in itself sufficient to establish a good title against a subsequent registered purchaser, as ruled in the Full Bench case of *Narain Chunder Chuckerbutty v. Dataram Roy* (1), still such possession, especially the possession in the present case, is a very cogent proof of notice—*Nani Bibi v. Hafizullah* (2). The Munsiff accordingly decided the issue in Gunamoni's favor, preferring his purchase to that of the plaintiff.

On appeal the District Judge of the 24-Pergunnahs found that there was no proof of notice, nor was there any evidence that the plaintiff knew that Gunamoni was in receipt of rent from Narsingh Kumar Dut. He held that Gunamoni's purchase was invalid as against the plaintiff for want of registration, thus reversing the decision of the Munsiff.

The defendant Gunamoni appealed to the High Court.

Baboo *Umakali Mookerjee* for the appellant.

Baboo *Rash Behary Ghose* for the respondents.

The judgment of the Court (O'KINEALY and TREVELYAN, JJ.) was as follows:—

In this case the point of law which it is necessary to decide is what is the effect as regards notice of possession of the rents of the property in suit. If it be true that the purchaser is bound without notice of the lessor's title, no doubt the learned Judge in the Court below was wrong. If, on the other hand, it be true, as a proposition of law, that he has only notice of the tenancy, and it is the tenant in actual possession alone who can raise any equity against the purchaser, then the Judge in the Court below was right. The point has been expressly decided by the Privy Council. In the case of *Barnhart v. Greenshields* (3) their Lordships, in dealing with this question, say as

(1) I. L. R., 8 Calc., 597 S. C. ; 10 C. L. R., 241.

(2) I. L. R., 10 Calc., 1073.

(3) 9 Moore's P. C., 18.

follows: "In all the cases to which we have referred, it will be observed that the possession relied on was the actual occupation of the land; and that the equity sought to be enforced was on behalf of the party so in possession. There is no authority in these cases for the proposition that notice of a tenancy is notice of the title of the lessor; or that a purchaser neglecting to inquire into the title of the occupier, is affected by any other equities than those which such occupier may insist on."

It seems, therefore, to us that the point has already been concluded by authority of the Privy Council. The purchaser was bound, as their Lordships say, with notice of the tenancy, and was liable to any equity which the tenant in occupation could raise against him; but he was not bound by notice of the lessor's title, and he has no equity whatsoever.

The result is that this appeal will be dismissed with costs.

C. D. P.

Appeal dismissed.

SMALL CAUSE COURT REFERENCE.

Before Mr. Justice Wilson and Mr. Justice Trevelyan.

HEILGERS & CO. (PLAINTIFFS) v. JADUB LALL SHAW AND ANOTHER
(DEFENDANTS.)*

1889
March 5.

Contract, Construction of—Cash on delivery—Readiness and willingness to take delivery—Delivery, Failure of, in terms of contract—Breach of contract—Custom.

Where a contract is for delivery "free on board," and cash on delivery is provided for, payment may be required upon delivery of the goods at the time and place mentioned for delivery in the contract.

THIS was a suit, brought by Messrs. Heilgers & Co., to recover Rs. 2,000 as damages from the defendants, who were jute balers, for failure to deliver certain bales of jute in accordance with a contract.

The contract bore date the 25th June 1887, and under it the plaintiffs bought from the defendants two thousand bales of jute at Rs. 12-8 per bale, the terms and conditions being cash on delivery; one thousand bales to be shipped in October, and one

* Small Cause Court Reference No. 6 of 1888, made by H. Millett, Esq., Chief Judge of the Small Cause Court of Calcutta.